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BOUNDARIES OF ONTARIO.

SPEECH DELIVERED IN THE HOUSE OF COMMONS

—FEBRUARY 19th, 1880.—

BY

HON. WM. MACDOUGALL, C.B., M.P.

(From the Official Report of the Debates.)

MR. MACDOUGALL: The hon. gentleman who has just addressed the House was good enough to make some reference to a recommendation of mine, when I was employed as a Commissioner for the Province of Ontario, to investigate this question of its western and northern boundaries, and to report to that Government the facts, evidence, views and opinions resulting from that investigation. I suppose the hon. gentleman gives me some credit—I took it in a complimentary sense—that, on that occasion I recommended the appointment of a third person to act with the two Commissioners appointed by the respective Governments, whose report might take the form of an award. That is quite true, but in attempting to make that recommendation a cover for, or to commit me in any way to the approval of the award which has been made, the hon. gentleman compels me to say that, if the members of this House will refer to the correspondence published in the Journals of the Local Legislature, they will see that it was not intended, nor did it enter into my mind, that the report of the Commissioners should be a definitive award like that which we are now considering. It was to be an examination of the history of the question, a collection of material facts which might be found pertinent to a decision of the question, Is there a western or northern boundary line of Ontario? If we found it, we were to report the fact. We had no authority to make or declare a boundary. With the indulgence of the House, I will take the opportunity to make a few remarks upon the gravity of the question we have to deal with, and upon the objections which have been made to the proposition of the hon. gentleman opposite (Mr. Dawson) to refer to a Committee of this House the duty of examining and reporting upon this award. In the first place, the extent of territory that is involved, the material interests that are at stake—or rather the control and jurisdiction over these material interests—as well as the political questions involved in the action which this House is invited to take by the hon. gentleman opposite, when he asked us to approve of the award, are too important for off-hand or summary treatment. I have in my hand a report prepared by the Ontario Government, accompanied by a map illustrating the extent of territory, and the importance of the interests from a Provincial point of view that are involved in t is question. I will take the liberty of reading a single paragraph which will enable the House

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to see how important, in the estimation of the Local Government of Ontario, at least, is the question we are now discussing. In mentioning the area of country involved, the compiler of this official document states :

"The district included within these boundaries is of equal if not greater area than the whole of the rest of Ontario, exclusive of the Lakes Ontario, Superior, Huron, and Erie. Omitting those Lakes the Province, within the limits embraced in the proposition of the Dominion, contained about 64,000,000 acres, or 100,000 square miles of territory. From the Quebec boundary line—from Lake Temiscamingue to James Bay—to the Lake of the Woods, the distance cannot be much less than seven hundred miles; while measured from north to south the new territory covers a breadth of country varying from over three hundred to one hundred miles; the Province of Ontario will consequently in future possess an area of fully 200,000 square miles. This is 80,000 square miles greater than the area of the United Kingdom; only 12,000 square miles less than the whole German Empire; only 2,000 square miles less than France, and equal to the combined areas of Holland, Portugal, United Italy, Switzerland and Belgium. The awarded territory alone possesses an area greater by 20,000 square miles than the group of countries just named, excepting Italy."

So it will be seen from this short statement, that a very large portion of the earth's surface is waiting the decision of this Parliament with respect to its future municipal and territorial jurisdiction. It cannot be said that such a question ought to be disposed of *per saltum*, by a new Parliament. A large number of the members are new to this question—at least they have not dealt with it as legislators hitherto, or been called upon to investigate or discuss it. I have already found hon. members, well informed on most questions, who say they have not had an opportunity of perusing those documents and voluminous reports, one by the late Minister of the Interior, and another by a distinguished literateur of Toronto, Mr. Lindsey, and another published by the Ontario Government, which deal with the history of the question. If members desire to inform themselves as to the truth and cogency of the statements made by the advocates of the different boundaries proposed, and to pronounce intelligently upon the merits of the case, it will be necessary that some means be adopted to furnish the House with information, and that time be given it to decide. I am not quite convinced that it is not the duty of the Government, in a matter of such gravity as the present, to take the matter into their own hands. I confess I felt the force of the objections made on the other side of the House, against handing over a question like this to a private member, allowing him to take the control of it, and to name the Committee, of which he is to be Chairman. So far as I can judge from the speech of the Minister of Justice, yesterday, and from what has since transpired, the Government do not object to this Committee. If appointed, I think it will be necessary for its members to go over the whole ground already traversed by those concerned in the previous discussions. I think that, the question having remained for nine years since the first Commissioners were appointed, without friendly settlement or final adjudication, it may properly remain a few weeks, or even a few months longer, under investigation, before the Parliament of the Dominion is called upon to make its final judgment in the case. As one of those concerned in the earlier enquiries into the question of our north-western boundaries, and having been charged with the duty of examining and reporting upon them, I have always felt anxious for, and have urged a speedy settlement. The Government of the Dominion in 1871, as well as the Local Government of that day, felt the importance, in view of the administration of justice in the disputed territory, of having it clearly established what authority had jurisdiction in it. The Local Government of Ontario in 1872—a change having taken place, and the member for West Durham having acceded to the Premiership—thought proper to take this question into their own hands, in a spirit wholly different from that which moved those who first undertook to settle it. The case was being investigated, Commissioners had been appointed, one by the Dominion and the other by Ontario; but final instructions had not been given them, and they had never met. It had been part of my duty in connection with the negotiations for the acquisition of the Hudson's Bay Territory, to examine the maps and authorities bearing on this subject. On the resignation of Mr. Sandfield Macdonald, and the assumption of office by the hon. member for West Durham, I was called on suddenly to report as to the pro-

gress of the Commission. After some correspondence between the Local and Dominion Governments, I was called upon to report my views, opinions and conclusions, with reference to the whole case. In obedience to this pressing demand, I prepared a Report, which you will find in the Sessional Papers of the Local Legislature for 1873, Part 3. It is merely a preliminary paper, setting forth the difficulties of the question, and the different constructions which might be put on the Act of 1774, and referring to the Commissions and Instructions given to the Governors of the Province of Quebec, with other authorities. It states also the conclusions at which I, as an individual, had arrived, after reviewing all those authorities. As soon as that paper came into the possession of the Local Government, I was instructed to cease all operations or proceedings as a Commissioner. In fact, I was very civilly, or, perhaps, I should say, uncivilly, dismissed. I was discharged, at all events, from any further duty or concern in the matter. The member for West Durham took the case into his own hands, as head of the Local Government, and, after some correspondence, which you will find in the papers published by the Local Legislature, a change of Government took place in the Dominion, the hon. gentleman's political friends acceding to office, and he himself becoming a Minister; and for five years from that period hon. gentlemen opposite, with their political friends in the Local Government, had the question under their control. They had the Dominion Parliament and the Ontario Legislature at their back; the case had reached a certain stage of progress when it fell into their hands, and upon them rests the responsibility for its non-settlement while they remained in power. They did not settle it, although it had been urged previously, on both sides, that a speedy settlement was very desirable, in view of the possible commission of crimes in the disputed territory. Public works were commenced there, under the Administration of the hon. gentleman who now complains of a few weeks delay. The Arbitrators were appointed years ago, and some of them died without having accomplished their mission. In view of these facts, it does not come with very good grace from hon. gentlemen opposite, to press a new Parliament, dealing with this question for the first time, to dispose of it *per saltum*, by a vote, without any enquiry or examination of the different questions connected with it. I believe the majority of the House will take this view, and that the people of Canada will consider that, from the importance of the case, as stated by representatives of Ontario, we ought to enquire into, and carefully consider the question in all its aspects. I have no hesitation in expressing my own opinion that the right of Ontario to claim her boundary in the West, as far as the North-West Angle of the Lake of the Woods, is capable of conclusive demonstration. I do not agree with the Minister of Justice in his strict construction of the Act of 1774. We know now under what circumstances that Act was introduced and how it was dealt with. In 1839 the Report of the Debates on the Quebec Bill was discovered among the Egerton Manuscripts in the British Museum. That report is a very interesting document to the historical student of this country, for it shows the views that prevailed in England as well as in America with regard to many of the political questions then at issue between the two countries. The Cavendish Debates, as they are called, were reported by a skilful stenographer, and were not published until 1839. From them it appears that, when Lord North introduced the Quebec Act of 1774, in which the boundaries of Canada were defined, he submitted it to the House of Lords on the responsibility of the Government, and in that Act the Mississippi river was distinctly declared to be the Western Boundary of Canada.

MR. MILLS: Of Quebec.

MR. MACDOUGALL: Of Quebec of course, that being the name of the Province then. While the Act was under consideration in the Commons, Mr. Burke, then a distinguished member of that House, and the paid agent of New York, in discharging his duty to his employers, as well as to his constituents, felt it his duty to object to the loose way in which the boundary was declared in the preamble to the Bill. The House suspended proceedings, the report observes, during half an hour, while Burke and other members went up stairs to consult the maps; they came down with an alteration in the description. In the Bill, Quebec was declared

to be bounded on the south by the Ohio river, on the west by the Mississippi, on the north by the Hudson's Bay territories. In the amended description, a limitary line is laid down. The description was altered so far in order to avoid interference with the then Colony of New York on the south. With this object Mr. Burke ran a line until he came to the expression "northward," in the original description. He had got down to the junction of the Ohio with the Mississippi, and, having no further interest in the matter, he did not interfere with the Bill any further. But the new description was inapplicable and incongruous, because the words "the left bank of the Mississippi" were omitted. I shall read the description of the country added to the Province of Quebec, by the Act of 1774, as it was expressed in the Bill when it passed the House of Lords:—

"Be it enacted, that all the said territories, islands and countries, (referred to in the preamble), heretofore part of the territory of Canada in North America, extending southward to the banks of the River Ohio; westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay, etc., and they are hereby during His Majesty's pleasure, made part and parcel of the Province of Quebec," etc.

All the territories, etc., lying within the bounds mentioned, east of the Mississippi river, were annexed to Quebec, and, except the portion afterwards surrendered to the United States, became part of Upper Canada, when that Province was created. The description in the Act as finally passed, after defining a line on the south to the north-west angle of Pennsylvania, is in these words:—

"And thence along the western boundary of the said Province until it strikes the River Ohio, and along the bank of the said river westword to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay."

Now, of course, the whole argument turns upon the proper interpretation of this word, "northward," as used in the Act. We have the Act before us, and, according to a rule of construction which I remember to have read a good many years ago, you cannot look at the surrounding circumstances in interpreting an Act of Parliament. You cannot read the speeches of members of Parliament when the Act was under discussion to discover the meaning of obscure passages. But in more modern times I find that, in the United States, and also in England, the Judges have found it necessary, in delivering their judgments, to consult the records of Parliament, and even to consult *Hansard*. There are cases in our own Courts in which the Judges have referred to what took place in Parliament as a means of ascertaining and explaining the meaning of ambiguous expressions. And I think that, in a great political question of this sort, we are justified in looking into its history. A brief exploration enables us to ascertain the object of the Imperial Government in adding these territories to the old Province of Quebec. The object as stated by Lord North was to include certain trading posts not then within the jurisdiction of the Province of Quebec, in order to give them the advantages of an organised Government. These posts, as we well know, were beyond the boundary which would have been assigned to Quebec if the line were to run due north from the junction of the Ohio with the Mississippi. The very object of the Bill would have been defeated by such a construction. There is enough doubt in the case, at all events, to justify its reference to a Committee of the ablest men in Parliament. If the members of this House representing the other Provinces are under the apprehension that, by agreeing to this conventional boundary, they will be giving to Ontario great additional territory and political power, which in the future might be used adversely to their interests, then they have a right to demand that this question shall be judicially determined by the highest judicial authority in the Empire. In that case, I apprehend all parties and all Provinces will acquiesce in the decision. The people of the other Provinces do not, I believe, desire to deprive Ontario of her just rights. If entitled to this territory, she will get it and no one will have a right to complain. The people expect at our hands that we shall defend, not only Dominion, but Provincial rights, and I doubt if any Ontario member on either side of the House will hesitate to exercise the authority given him by his constituents, to defend the rights of the people of that Province to the last. We want the true boundary, so far as it can be ascertained, nothing more, nothing less. Now, let me call the attention of the House for a few

moments to the difficulties connected with that question. It is a boundary that can only be ascertained by reference to certain points mentioned in the Act of 1774, and in Royal Proclamations and Commissions to Governors. So long as you are on the Mississippi, you have a natural boundary on the west, but when you get to Lake Itaska, the most northern source of that river, you are left on the prairie, and then, having nothing to explain the course intended by the word northward, I suppose you must go due north. Then on the north we have the limit "to the southern boundary of the territory granted to the Hudson's Bay Company." The Minister of Justice is under the impression that we did not make any attempt to claim or define boundaries in the discussion with the Hudson's Bay authorities. That question, Sir, was very thoroughly discussed, and Mr. Mowat adopts the argument we used on that occasion, and makes it a part of his case.

MR. McDONALD (Pictou): I did not say that my hon. friend did not raise the question of boundary at all; but I said that Ontario did not, antecedent to that discussion.

MR. MACDOUGALL: The question had not arisen until Confederation, as regards Ontario, and, in every controversy with the Hudson's Bay Company, we always contended that our boundary went very far west of the Height of Land. The Government of Canada, on every public occasion, disputed the right of the Hudson's Bay Company to territory outside of the undefined circle about Hudson's Bay. They took that ground upon the final settlement of the question, when Sir George Cartier and myself represented the Government, and I never heard any complaint about our argument, except my right hon. friend said on our return: "You used pretty sharp language." I, for one, felt very warm upon that question, when I found that an ex-member of the Imperial Government had been appointed Governor of the Hudson's Bay Company, and that, before our negotiations were concluded, we had to meet the arguments of a gentleman to whom we had shown our hand when the statement of our rights as against the Hudson's Bay Company wsa confidential ly laid before the Imperial Cabinet. Our territorial claims as against the Hudson's Bay Company are set forth at length in the correspondence between the Canadian Delegates and the Colonial Office, and our arguments are quoted by Mr. Mowat in his statement of the case for Ontario, as being cogent and in accordance with facts. We were acting of the name and on behalf of Canada. We felt that we were reiterating the views entertained and expressed by the Government of Canada on all occasions since the question was first raised in Parliament, and I am not aware that the contention of the Canadian Government that the proprietary rights of the Hudson's Bay Company were restricted to the country they occupied prior to the Treaty of Paris of 1763, has ever been officially withdrawn or denied. If the Hudson's Bay Company had no legal right to the territory beyond the line laid down on the maps of that period—one or two hundred miles, perhaps, south of Hudson Bay—if that was the extreme extent southward to which they had laid claim, we have now to find, and the Judical Committee of the Privy Council, if the question be referred to them, will have to find, the southern limit of the territory of the Hudson's Bay Company as laid down by themselves. That will be as very difficult proposition—a very difficult question to dispose of by metes and bounds. The Hudson's Bay Company at different periods extended their claims. The French Government on the other hand, on behalf of their citizens and traders, pushed the boundaries of the French territory as near to Hudson's Bay as possible. Commissioners were appointed on behalf of the two countries, who met and discussed the matter, and maps were submitted. I do not know that a Court of Law could find any rule or precedent applicable to such a case, that would justify it in fixing a boundary outside of the limits laid down by these Commissioners. I think it probable that a line must be found somewhere between these two. It will be impossible to mark it upon the ground by reference to any known landmarks or natural objects. It will be a matter of reasoning and conjecture, and therefore, in regard to that part of the case, it seems to me the question is one that can very well be disposed of by the authority of Parliament. The country between the southern boundary of the Hudson's Bay territory as claimed either by the English or French Com-

missioners before the Cession in 1783, and James's Bay, which is given to Ontario by this Award, is of little value for any purpose. It is said to be frozen within a few inches of the surface all the year round. There is no timber there of any consequence, as explorers tell us. It may be rich in minerals, but our country is full of mineral deposits in regions much more accessible. I do not agree with the hon. member for Algoma, that the country is too far distant, to be properly administered by Ontario. I think our Local Government is quite capable of administering justice or doing whatever is necessary for this territory up to James's Bay. The hon. gentleman proposes to establish a new Province in this rocky, treeless, and frozen region—I think we have Provinces enough of that description. I do not find that the Dominion is at all helped, or its financial burdens lessened by establishing new Provinces under such circumstances. We are expending a great deal for Manitoba—a fertile Province—and for the territory beyond and we are about to pay, if this House approves of the contracts the Government have given out, a good many millions for the construction of a Railway in British Columbia, one of these newly acquired Provinces. I think Sir, in view of these facts, there is not much inducement to the taxpayers of this Dominion to create new Provinces unnecessarily. I see no necessity for it in this case. Ontario numbers nearly two millions—one half the population of this Dominion. It is the richest Province—the most productive Province—of this Dominion. It is the only Province that to-day pays a surplus into the Dominion Treasury. The other Provinces take more out of the Dominion Treasury than they contribute to it.

Several HON. GENTLEMEN: No no.

MR. MACDOUGALL: Hon. gentlemen say no—they ought to move for the publication of the report made by Mr. Langton, in answer to an Address of this House, of the income from, and the expenditure in, the several Provinces, for the first six years of Confederation. I think it will be seen from that report that a very considerable portion of the revenue and all the surplus came from Ontario. I am not blaming the other Provinces, nor do I regard it as a reason for changing our liberal policy towards them. The people of Ontario are more numerous, they occupy a richer soil and enjoy a finer climate, their productive energies are greater, and they can afford to pay more, but, when we are told that they cannot control or govern a certain portion of territory, because it is too distant, and would prove too burdensome, I think my hon. friend will have to find some better argument to justify the creation of a new Province in the North. Upon the whole case, it appears to me there is no occasion for dispute—no reason for exciting sectional feeling, in this matter. The people of Ontario will be satisfied with an adjudication which is legal and conclusive, and they will accept whatever territory is awarded to them by a properly constituted tribunal. I believe they will accept what the Arbitrators have given them if confirmed by this House. It is less than many of their public writers and advocates claim, but still, if this award is not confirmed by Parliament, the question must be determined by the highest judicial authority in the Empire. I hope, Sir, that, if a Committee be appointed, it will be composed of members from different Provinces, who will give their closest attention to the history, as well as the legal and constitutional aspects of the question. It will soon be discovered that it is not capable of mathematical or astronomical solution. It cannot be finally disposed of by any report or recommendation of a Select Committee. The Government will be responsible for the action of this House, and no Committee can relieve them of that responsibility. A Committee will be able to collect the material facts and the evidence bearing on the case. They will be able to report upon it more easily now than at any former time, and Parliament will, after such examination and report, be in a better position to determine either to confirm the award or remit the question to a legal tribunal.